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HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

Report of the Working Group on the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care

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GE.91-10275/2816B

INTRODUCTION

1. The Commission on Human Rights, at its forty-fifth session in 1989, decided, by its resolution 1989/40 of 6 March 1989, to establish an open-ended working group of the Commission to examine, revise and simplify as necessary the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care, submitted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1988/23), with a view to transmitting it to the Commission at its forty-sixth session. It requested the Working Group to meet for a period of two weeks before the forty-sixth session of the Commission.

2. At its first session, the Working Group held 21 meetings from 8 to 19 January 1990 and on 21 February 1990. In the light of the provisions of the aforesaid resolution, the Working Group at the first session considered and adopted articles corresponding to articles 1 and 3 to 14 of the Sub-Commission's draft. It also decided to reformulate article 14 of the Sub-Commission's draft and incorporate it into article 13 as paragraph 3. The Group considered some paragraphs of article 15 of the Sub-Commission's draft and adopted revised paragraphs 1 and 2 of that article.

3. In the course of its work on the articles referred to above, the Working Group also formulated and adopted two new articles, which it provisionally numbered as articles 5 (bis) and 6a without prejudice to their placement. Similarly, a general limitation clause, which would avoid the need for corresponding detailed qualifications to be incorporated in a number of separate articles, was adopted in principle by the Group, but without commitment to its wording and placement.

4. The Commission on Human Rights, at its forty-sixth session in 1990, in resolution 1990/38, took note of the Working Group's report (E/CN.4/1990/31) and decided to make available, prior to the forty-seventh session of the Commission, appropriate meeting time for the Working Group.

5. The Economic and Social Council, by resolution 1990/37 of 25 May 1990, authorized an open-ended working group to meet in a second session for a period of two weeks prior to the forty-seventh session of the Commission on Human Rights.

6. Consequently, the Working Group held 20 meetings from 29 October to 9 November 1990 and on 31 January 1991. The second session was opened on 29 October 1990 by the Under-Secretary-General for Human Rights who made an introductory statement. The following paragraphs of the present report relate to that second session.

ELECTION OF OFFICERS

7. At its first meeting, on 29 October 1990, the Working Group again elected Mr. Henry Steel (United Kingdom of Great Britain and Northern Ireland) as Chairman-Rapporteur.

PARTICIPATION

8. The meetings of the Working Group, which were open to all members of the Commission on Human Rights, were attended by representatives of the following

States members of the Commission: Belgium, Brazil, Canada, Cuba, France, Hungary, India, Italy, Japan, Nigeria, Philippines, Portugal, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America.

9. The following States, non-members of the Commission on Human Rights, were represented by observers at the meetings of the Working Group: Algeria, Australia, Austria, Finland, Indonesia, Greece, New Zealand, Poland and Zaire.

10. The United Nations Centre for Social Development and Humanitarian Affairs was represented at the Working Group by an observer.

11. The International Labour Organisation and the World Health Organization were represented at the Working Group by observers.

12. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers at the meetings of the Working Group: Disabled Peoples' International, Friends World Committee for Consultation, International Association of Penal Law, International Commission of Jurists, International Educational Development, Inc., World Association for Psychosocial Rehabilitation, World Federation for Mental Health, World Psychiatric Association.

DOCUMENTS

13. The Working Group had before it the following documents:

E/CN.4/1990/WG.8/L.2	Provisional agenda
E/CN.4/1990/WG.8/WP.3	Working paper submitted by the Secretariat pursuant to ECOSOC resolution 1990/37
E/CN.4/1990/31	Report of the Working Group on its first session
E/CN.4/1990/53	Report of the Secretary-General submitted pursuant to Commission on Human Rights resolution 1989/40
E/CN.4/1990/53/Add.1	Information and comments submitted by Sweden, the World Medical Association, and the World Psychiatric Association
E/CN.4/1990/53/Add.2	Information and comments submitted by Australia, Austria and the World Association for Psychosocial Rehabilitation
E/CN.4/1990/53/Add.3	Information and comments submitted by Japan and the World Health Organization
E/CN.4/1990/53/Add.4	Information and comments submitted by Nigeria

E/CN.4/Sub.2/1988/23	Report of the sessional Working Group on the question of persons detained on the grounds of mental ill-health or suffering from mental disorder, including Draft Principles and Guarantees for the Protection of Mentally-ill Persons and for the Improvement of Mental Health Care. Report prepared by Mrs. Claire Palley
E/CN.4/Sub.2/1983/17/Rev.1	Principles, Guidelines and Guarantees for the Protection of Persons Detained on Grounds of Mental Ill-Health or Suffering from Mental Disorder. Report prepared by Mrs. Erica-Irene A. Daes
E/CN.4/Sub.2/1983/17/Add.1	Annex III to Mrs. Daes' report (above).

ORGANIZATION OF WORK

14. At its first meeting, on 29 October 1990, the Working Group adopted its agenda, contained in document E/CN.4/1990/WG.8/L.2.

15. The Chairman-Rapporteur made an introductory statement, referring to the work accomplished at the first session of the Working Group. He proposed, and the Working Group agreed, that the most efficient way to proceed would be to put aside for later consideration the question of the title of the draft as a whole (as well as the headings of particular articles) and also the various definitions of terms contained in article 2 of the Sub-Commission's draft. The Working Group would revert to these matters after it had completed its consideration of all the substantive articles. At that point, the necessary decisions on title and headings would be taken in the light of the shape and content of the draft as a whole and it would then be possible to see more clearly what terms needed definition.

16. Accordingly, the Working Group decided to work its way, article by article, through the remainder of the draft submitted by the Sub-Commission (but leaving aside article 2, as explained above), modifying and replacing particular provisions in the Sub-Commission's text as might be necessary and agreed, and adopting agreed texts of the various articles as the work proceeded. It was accepted that, when the remaining text had been covered in this way, further consideration would have to be given to the placement of certain articles (and of particular paragraphs in certain articles). It was also accepted that decisions still to be taken on some of the later articles might make it necessary to reconsider some of the provisions adopted at its first session and to modify them so as to ensure consistency of approach, both as regards substance and as regards form and language. More generally, it was agreed that when the Working Group had completed its discussion of the draft as a whole, it would be desirable to arrange for the carrying out of a technical review to ensure economy and consistency of drafting and, in particular, the consistency of the draft with the relevant international instruments in the field of human rights.

CONSIDERATION AND DRAFTING OF ARTICLES

17. In the light of these decisions on its working methods, the Working Group embarked on its examination, revision and simplification, as necessary, of the remaining articles of the draft body of principles and guarantees, as submitted by the Sub-Commission and as supplemented by comments and suggestions from Governments, specialized agencies and non-governmental organizations contained in documents E/CN.4/1990/WG.8/WP.3 and E/CN.4/1990/53 and Add.1-4.

18. At its second meeting, on 29 October 1990, the Working Group reconsidered paragraph 2 of article 15 and adopted a revised version of that paragraph. 1/ At its 3rd to 12th meetings, from 30 October to 5 November 1990, it considered and adopted articles corresponding to articles 16 to 24 of the Sub-Commission's draft. In the light of its discussion of those articles, it also reconsidered and reformulated some of the provisions which it had adopted in its first session.

19. In the course of considering the articles referred to above, the Working Group again also formulated and adopted some new articles and paragraphs. On 30 October it formulated and adopted a new article relating to the protection of minors; and on 8 November 1990 it formulated and adopted a new article relating to the right of a person with a mental illness to live and work in the community. At its 7th to 10th meetings, on 1 and 2 November, it adopted a revised version of paragraph 5 of article 3 and a new paragraph 6 of that article and also a revised version of paragraph 1 of article 5. At its 12th meeting, on 5 November 1990, it reformulated paragraphs 2 and 3 of article 5.

20. When it had completed its first reading of the substantive articles, the Working Group considered article 2 (Definitions). It revised some of the definitions in the Sub-Commission's draft, deleted the definitions of "mental illness" and "severe mental illness", and formulated and inserted new definitions of the following terms: "counsel", "independent authority", "mental health care", "personal representative" and "review body". It then adopted article 2 as so amended.

21. At its 13th to 19th meetings, from 6 to 9 November 1990, the Working Group carried out a second reading of the whole text of the draft as adopted on the first reading. In the course of this second reading, it revised paragraphs 6, 13 and 14 of article 12 and also adopted a number of other changes to the text, principally for the sake of clarity or consistency - and, in particular, consistency with other relevant instruments. At the same time it adopted headings for each article. It then agreed that all of the articles (other than those dealing with the application of the instrument as a whole and the definition of terms used in it and also the "general limitation clause" - all of which, it decided, should feature as unnumbered introductory provisions) should be designated "Principles", should be rearranged in what the Working Group agreed was a more logical sequence, and should be renumbered accordingly, and that the whole instrument should be entitled "Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care". The Working Group also invited the Secretariat to arrange for the carrying out, before the adoption of the present report, of a technical review 2/ of the text of the whole instrument as otherwise adopted in the course of the second reading and to incorporate the product of that

review in the draft of the report which would be placed before the Working Group at its final meeting. The Secretariat has performed that task and the Working Group has approved the result.

22. The text of the complete draft instrument, in the form in which it has thus been adopted by the Working Group, is set out in annex I to the present report.

23. The Working Group also examined the draft "Introduction" which accompanied the Sub-Commission's text of the Principles (see E/CN.4/Sub.2/1988/23). The Working Group was of the opinion that such an "Introduction", useful though it was as an explanation of the origin, context and purpose of the Principles, could not properly form an integral part of the text of the Principles but that, if that text were in due course approved by the Commission for eventual adoption, on the Commission's recommendation, by the General Assembly, consideration should be given to publishing the "Introduction" separately in some appropriate form - perhaps in a United Nations press release - for the benefit of Governments and the public at large. With this possibility in mind, the Working Group revised the text of the "Introduction" so as to bring its terms into conformity with those of the Principles themselves. The text, as so revised, is accordingly set out in annex II to the present report.

24. At its 20th meeting, on 31 January 1991, the Working Group adopted the present report.

25. The Working Group considers that, with the submission of this, its second and final report, it has discharged the mandate originally entrusted to it by the Commission's resolution 1989/40 of 6 March 1989. The text of the body of Principles set out in annex I is the outcome of a wide-ranging, searching and conscientious discussion. At all stages in that discussion the participants have sought to ensure that the resulting formulations adequately reflect and accommodate all legal and social systems and all stages of development without sacrificing the essential needs and basic rights of the individual human beings ultimately concerned. The Working Group ventures to hope and believe that the text as a whole, if it is eventually endorsed and implemented by the international community, will constitute an effective contribution to the protection in all countries of persons with mental illness and to the improvement of mental health care. In that hope and belief the Working Group now submits the text in annex I to the Commission and respectfully invites the Commission to transmit it, with the Commission's own recommendation, through the Economic and Social Council, for adoption by the General Assembly.

Notes

1/ Here and elsewhere in paragraphs 18-21 of the present report, references to numbered articles and paragraphs are to those articles and paragraphs as in the Sub-Commission's text or in the Working Group's first report (E/CN.4/1990/31).

2/ See paragraph 16 above.

ANNEXES

Annex I

PRINCIPLES FOR THE PROTECTION OF PERSONS WITH MENTAL ILLNESS AND FOR THE IMPROVEMENT OF MENTAL HEALTH CARE

APPLICATION

These Principles shall be applied without discrimination of any kind such as on grounds of disability, race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, legal or social status, age, property or birth.

DEFINITIONS

In these Principles:

"counsel" means a legal or other qualified representative;

"independent authority" means a competent and independent authority prescribed by domestic law;

"mental health care" includes analysis and diagnosis of a person's mental condition, and treatment, care and rehabilitation for a mental illness or suspected mental illness;

"mental health facility" means any establishment, or any unit of an establishment, which as its primary function provides mental health care;

"mental health practitioner" means a medical doctor, clinical psychologist, nurse, social worker or other appropriately trained and qualified person with specific skills relevant to mental health care;

"patient" means a person receiving mental health care and includes all persons who are admitted to a mental health facility;

"personal representative" means a person charged by law with the duty of representing a patient's interests in any specified respect or of exercising specified rights on the patient's behalf, and includes the parent or legal guardian of a minor unless otherwise provided by domestic law;

"the review body" means the body established in accordance with Principle 17 to review the involuntary admission or retention of a patient in a mental health facility.

GENERAL LIMITATION CLAUSE

The exercise of the rights set forth in these Principles may be subject only to such limitations as are prescribed by law and are necessary to protect the health or safety of the person concerned or of others or otherwise to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Principle 1

FUNDAMENTAL FREEDOMS AND BASIC RIGHTS

1. All persons have the right to the best available mental health care, which shall be part of the health and social care system.

2. All persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person.

3. All persons with a mental illness, or who are being treated as such persons, have the right to protection from economic, sexual and other forms of exploitation, physical or other abuse and degrading treatment.

4. There shall be no discrimination on the grounds of mental illness. "Discrimination" means any distinction, exclusion or preference that has the effect of nullifying or impairing equal enjoyment of rights. Special measures solely to protect the rights, or secure the advancement, of persons with mental illness shall not be deemed to be discriminatory. Discrimination does not include any distinction, exclusion or preference undertaken in accordance with the provisions of these Principles and necessary to protect the human rights of a person with a mental illness or of other individuals.

5. Every person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and in other relevant instruments such as the Declaration on the Rights of Disabled Persons and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

6. Any decision that, by reason of his or her mental illness, a person lacks legal capacity, and any decision that, in consequence of such incapacity, a personal representative shall be appointed, shall be made only after a fair hearing by an independent and impartial tribunal established by domestic law. The person whose capacity is in issue shall be entitled to be represented by a counsel. If the person whose capacity is in issue does not himself or herself secure such representation it shall be made available without payment by that person to the extent that he or she does not have sufficient means to pay for it. The counsel shall not in the same proceedings represent a mental health facility or its personnel and shall not also represent a member of the family of the person whose capacity is in issue unless the tribunal is satisfied that there is no conflict of interest. Decisions regarding capacity and the need for a personal representative shall be reviewed at reasonable intervals prescribed by domestic law. The person whose capacity is in issue, his or her personal representative, if any, and any other interested person shall have the right to appeal to a higher court against any such decision.

7. Where a court or other competent tribunal finds that a person with mental illness is unable to manage his or her own affairs, measures shall be taken, so far as is necessary and appropriate to that person's condition, to ensure the protection of his or her interests.

Principle 2

PROTECTION OF MINORS

Special care should be given within the purposes of these Principles and within the context of domestic law relating to the protection of minors to protect the rights of minors, including, if necessary, the appointment of a personal representative other than a family member.

Principle 3

LIFE IN THE COMMUNITY

Every person with a mental illness shall have the right to live and work, as far as possible, in the community.

Principle 4

DETERMINATION OF MENTAL ILLNESS

1. A determination that a person has a mental illness shall be made in accordance with internationally accepted medical standards.

2. A determination of mental illness shall never be made on the basis of political, economic or social status, or membership of a cultural, racial or religious group, or any other reason not directly relevant to mental health status.

3. Family or professional conflict, or non-conformity with moral, social, cultural or political values or religious beliefs prevailing in a person's community, shall never be a determining factor in diagnosing mental illness.

4. A background of past treatment or hospitalization as a patient shall not of itself justify any present or future determination of mental illness.

5. No person or authority shall classify a person as having, or otherwise indicate that a person has, a mental illness except for purposes directly relating to mental illness or the consequences of mental illness.

Principle 5

MEDICAL EXAMINATION

No person shall be compelled to undergo medical examination with a view to determining whether or not he or she has a mental illness except in accordance with a procedure authorized by domestic law.

Principle 6

CONFIDENTIALITY

The right of confidentiality of information concerning all persons to whom these Principles apply shall be respected.

Principle 7

ROLE OF COMMUNITY AND CULTURE

1. Every patient shall have the right to be treated and cared for, as far as possible, in the community in which he or she lives.

2. Where treatment takes place in a mental health facility, a patient shall have the right, whenever possible, to be treated near his or her home or the home of his or her relatives or friends and shall have the right to return to the community as soon as possible.

3. Every patient shall have the right to treatment suited to his or her cultural background.

Principle 8

STANDARDS OF CARE

1. Every patient shall have the right to receive such health and social care as is appropriate to his or her health needs, and is entitled to care and treatment in accordance with the same standards as other ill persons.

2. Every patient shall be protected from harm, including unjustified medication, abuse by other patients, staff or others or other acts causing mental distress or physical discomfort.

Principle 9

TREATMENT

1. Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.

2. The treatment and care of every patient shall be based on an individually prescribed plan, discussed with the patient, reviewed regularly, revised as necessary and provided by qualified professional staff.

3. Mental health care shall always be provided in accordance with applicable standards of ethics for mental health practitioners, including internationally accepted standards such as the Principles of Medical Ethics adopted by the United Nations General Assembly. Mental health knowledge and skills shall never be abused.

4. The treatment of every patient shall be directed towards preserving and enhancing personal autonomy.

Principle 10

MEDICATION

1. Medication shall meet the best health needs of the patient and shall be given to a patient only for therapeutic or diagnostic purposes and shall never

be administered as a punishment, or for the convenience of others. Subject to the provisions of paragraph 15 of Principle 11, mental health practitioners shall only administer medication of known or demonstrated efficacy.

2. All medication shall be prescribed by a mental health practitioner authorized by law and shall be recorded in the patient's records.

Principle 11

CONSENT TO TREATMENT

1. No treatment shall be given to a patient without his or her informed consent, except as provided for in paragraphs 6, 7, 8, 13 and 15.

2. Informed consent is consent obtained freely without threats or improper inducements after appropriate disclosure to the patient of adequate and understandable information in a form and language understood by the patient on:

(a) The diagnostic assessment;

(b) The purpose, method, likely duration and expected benefit of the proposed treatment;

(c) Alternative modes of treatment, including those less intrusive; and

(d) Possible pain or discomfort, risks and side-effects of the proposed treatment.

3. A patient may request the presence of a person or persons of the patient's choosing during the procedure for granting consent.

4. A patient has the right to refuse or stop treatment except as provided for in paragraphs 6, 7, 8, 13 and 15. The consequences of refusing or stopping treatment must be explained to the patient.

5. A patient shall never be invited or induced to waive the right to informed consent. If the patient should seek to do so, it shall be explained to the patient that the treatment cannot be given without informed consent.

6. Except as provided in paragraphs 7, 8, 12, 13, 14 and 15 a proposed plan of treatment may be given to a patient without a patient's informed consent if the following conditions are satisfied:

(a) The patient is, at the relevant time, held as an involuntary patient;

(b) An independent authority, having in its possession all relevant information, including the information specified in paragraph 2, is satisfied that, at the relevant time, the patient lacks the capacity to give or withhold informed consent to the proposed plan of treatment or, if domestic legislation so provides, that, having regard to the patient's own safety or the safety of others, the patient unreasonably withholds such consent; and

(c) The independent authority is satisfied that the proposed plan of treatment is in the best interests of the patient's health needs.

7. Paragraph 6 does not apply to a patient with a personal representative empowered by law to consent to treatment for the patient; but except as provided in paragraphs 12, 13, 14 and 15 treatment may be given to such a patient without his or her informed consent if the personal representative, having been given the information described in paragraph 2, consents on the patient's behalf.

8. Except as provided in paragraphs 12, 13, 14 and 15 treatment may also be given to any patient without the patient's informed consent if a qualified mental health practitioner authorized by law determines that it is urgently necessary in order to prevent immediate or imminent harm to the patient or to other persons. Such treatment shall not be prolonged beyond the period which is strictly necessary for this purpose.

9. Where any treatment is authorized without the patient's informed consent, every effort shall nevertheless be made to inform the patient about the nature of the treatment and any possible alternatives, and to involve the patient as far as practicable in the development of the treatment plan.

10. All treatment shall be immediately recorded in the patient's medical records, with an indication of whether involuntary or voluntary.

11. Physical restraint or involuntary seclusion of a patient shall not be employed except in accordance with the officially approved procedures of the mental health facility and only when it is the only means available to prevent immediate or imminent harm to the patient or others. It shall not be prolonged beyond the period which is strictly necessary for this purpose. All instances of physical restraint or involuntary seclusion, the reasons for them, and their nature and extent shall be recorded in the patient's medical record. A patient who is restrained or secluded shall be kept under humane conditions and be under the care and close and regular supervision of qualified members of the staff. A personal representative, if any and if relevant, shall be given prompt notice of any physical restraint or involuntary seclusion of the patient.

12. Sterilization shall never be carried out as a treatment for mental illness.

13. A major medical or surgical procedure may be carried out on a person with mental illness only where it is permitted by domestic law, where it is considered that it would best serve the health needs of the patient and where the patient gives informed consent, except that, where the patient is unable to give informed consent, the procedure shall be authorized only after independent review.

14. Psychosurgery and other intrusive and irreversible treatments for mental illness shall never be carried out on a patient who is an involuntary patient in a mental health facility and, to the extent that domestic law permits them to be carried out, they may be carried out on any other patient only where the patient has given informed consent and an independent external body has satisfied itself that there is genuine informed consent and that the treatment best serves the health needs of the patient.

15. Clinical trials and experimental treatment shall never be carried out on any patient without informed consent, except that a patient who is unable to

give informed consent may be admitted to a clinical trial or given experimental treatment but only with the approval of a competent, independent review body specifically constituted for this purpose.

16. In the cases specified in paragraphs 6, 7, 8, 13, 14 and 15, the patient or his or her personal representative, or any interested person, shall have the right to appeal to a judicial or other independent authority concerning any treatment given to him or her.

Principle 12

NOTICE OF RIGHTS

1. A patient in a mental health facility shall be informed as soon as possible after admission, in a form and a language which the patient understands, of all his or her rights in accordance with these Principles and under domestic law, which information shall include an explanation of those rights and how to exercise them.

2. If and for so long as a patient is unable to understand such information, the rights of the patient shall be communicated to the personal representative, if any and if appropriate, and to the person or persons best able to represent the patient's interests and willing to do so.

3. A patient who has the necessary capacity has the right to nominate a person who should be informed on his or her behalf as well as a person to represent his or her interests to the authorities of the facility.

Principle 13

RIGHTS AND CONDITIONS IN MENTAL HEALTH FACILITIES

1. Every patient in a mental health facility shall, in particular, have the right to full respect for his or her:

(a) Recognition everywhere as a person before the law;

(b) Privacy;

(c) Freedom of communication which includes freedom to communicate with other persons in the facility; freedom to send and receive uncensored private communications; freedom to receive, in private, visits from a counsel or personal representative and, at all reasonable times, from other visitors; and freedom of access to postal and telephone services and to newspapers, radio and television;

(d) Freedom of religion or belief.

2. The environment and living conditions in mental health facilities shall be as close as possible to those of the normal life of persons of similar age and in particular shall include:

(a) Facilities for recreational and leisure activities;

(b) Facilities for education;

(c) Facilities to purchase or receive items for daily living, recreation and communication;

(d) Facilities, and encouragement to use such facilities, for a patient's engagement in active occupation suited to his or her social and cultural background, and for appropriate vocational rehabilitation measures to promote reintegration in the community. These measures should include vocational guidance, vocational training and placement services to enable patients to secure or retain employment in the community.

3. In no circumstances shall a patient be subject to forced labour. Within the limits compatible with the needs of the patient and with the requirements of institutional administration, a patient shall be able to choose the type of work he or she wishes to perform.

4. The labour of a patient in a mental health facility shall not be exploited. Every such patient shall have the right to receive the same remuneration for any work which he or she does as would, according to domestic law or custom, be paid for such work to a non-patient. Every such patient shall in any event have the right to receive a fair share of any remuneration which is paid to the mental health facility for his or her work.

Principle 14

RESOURCES FOR MENTAL HEALTH FACILITIES

1. A mental health facility shall have access to the same level of resources as any other health establishment, and in particular:

(a) Qualified medical and other appropriate professional staff in sufficient numbers and with adequate space to provide each patient with privacy and a programme of appropriate and active therapy;

(b) Diagnostic and therapeutic equipment for the patient;

(c) Appropriate professional care; and

(d) Adequate, regular and comprehensive treatment, including supplies of medication.

2. Every mental health facility shall be inspected by the competent authorities with sufficient frequency to ensure that the conditions, treatment, and care of patients comply with these Principles.

Principle 15

ADMISSION PRINCIPLES

1. Where a person needs treatment in a mental health facility, every effort shall be made to avoid involuntary admission.

2. Access to a mental health facility shall be administered in the same way as access to any other facility for any other illness.

3. Every patient not admitted involuntarily shall have the right to leave the mental health facility at any time unless the criteria for his or her retention as an involuntary patient, as set forth in Principle 16, apply, and he or she shall be informed of that right.

Principle 16

INVOLUNTARY ADMISSION

1. A person may (a) be admitted involuntarily to a mental health facility as a patient; or (b) having already been admitted voluntarily as a patient, be retained as an involuntary patient in the mental health facility, if and only if a qualified mental health practitioner authorized by law for that purpose determines, in accordance with Principle 4, that that person has a mental illness and considers:

(i) That, because of that mental illness, there is a serious likelihood of immediate or imminent harm to that person or to other persons; or

(ii) That, in the case of a person whose mental illness is severe and whose judgement is impaired, failure to admit or retain that person is likely to lead to a serious deterioration in his or her condition or will prevent the giving of appropriate treatment which can only be given by admission to a mental health facility in accordance with the principle of the least restrictive alternative.

In the case referred to in subparagraph (ii), a second such mental health practitioner, independent of the first, should be consulted where possible. If such consultation takes place, the involuntary admission or retention may not take place unless the second mental health practitioner concurs.

2. Involuntary admission or retention shall initially be for a short period as specified by domestic law for observation and preliminary treatment pending review of the admission or retention by the review body. The grounds of the admission shall be communicated to the patient without delay and the fact of the admission and the grounds for it shall also be communicated promptly and in detail to the review body, to the patient's personal representative, if any, and, unless the patient objects, to the patient's family.

3. A mental health facility may receive involuntarily admitted patients only if the facility has been designated to do so by a competent authority prescribed by domestic law.

Principle 17

REVIEW BODY

1. The review body shall be a judicial or other independent and impartial body established by domestic law and functioning in accordance with procedures laid down by domestic law. It shall, in formulating its decisions, have the assistance of one or more qualified and independent mental health practitioners and take their advice into account.

2. The review body's initial review, as required by Principle 16.2, of a decision to admit or retain a person as an involuntary patient shall take

place as soon as possible after that decision and shall be conducted in accordance with simple and expeditious procedures as specified by domestic law.

3. The review body shall periodically review the cases of involuntary patients at reasonable intervals as specified by domestic law.

4. An involuntary patient may apply to the review body for release or voluntary status, at reasonable intervals as specified by domestic law.

5. At each review the review body shall consider whether the criteria for involuntary admission set out in Principle 16.1 are still satisfied, and, if not, the patient shall be discharged as an involuntary patient.

6. If at any time the mental health practitioner responsible for the case is satisfied that the conditions for the retention of a person as an involuntary patient are no longer satisfied, he or she shall order the discharge of that person as such a patient.

7. A patient or his personal representative or any interested person shall have the right to appeal to a higher court against a decision that the patient be admitted to, or be retained in, a mental health facility.

Principle 18

PROCEDURAL SAFEGUARDS

1. The patient shall be entitled to choose and appoint a counsel to represent the patient as such, including representation in any complaint procedure or appeal. If the patient does not secure such services, a counsel shall be made available without payment by the patient to the extent that the patient lacks sufficient means to pay.

2. The patient shall also be entitled to the assistance, if necessary, of the services of an interpreter. Where such services are necessary and the patient does not secure them, they shall be made available without payment by the patient to the extent that the patient lacks sufficient means to pay.

3. The patient and the patient's counsel may request and produce at any hearing an independent mental health report and any other reports and oral, written and other evidence that are relevant and admissible.

4. Copies of the patient's records and any reports and documents to be submitted shall be given to the patient and to the patient's counsel except in special cases where it is determined that a specific disclosure to the patient would cause serious harm to the patient's health or put at risk the safety of others. As domestic law may provide, any document not given to the patient should, when this can be done in confidence, be given to the patient's personal representative and counsel. When any part of a document is withheld from a patient, the patient or the patient's counsel, if any, shall receive notice of the withholding and the reasons for it and it shall be subject to judicial review.

5. The patient and the patient's personal representative and counsel shall be entitled to attend, participate and be heard personally in any hearing.

6. If the patient or the patient's personal representative or counsel requests that a particular person be present at a hearing, that person shall be admitted unless it is determined that the person's presence could cause serious harm to the patient's health or put at risk the safety of others.

7. Any decision whether the hearing or any part of it shall be in public or in private and may be publicly reported shall give full consideration to the patient's own wishes, to the need to respect the privacy of the patient and of other persons and to the need to prevent serious harm to the patient's health or to avoid putting at risk the safety of others.

8. The decision arising out of the hearing and the reasons for it shall be expressed in writing. Copies shall be given to the patient and his or her personal representative and counsel. In deciding whether the decision shall be published in whole or in part, full consideration shall be given to the patient's own wishes, to the need to respect his or her privacy and that of other persons, to the public interest in the open administration of justice and to the need to prevent serious harm to the patient's health or to avoid putting at risk the safety of others.

Principle 19

ACCESS TO INFORMATION

1. A patient (which term in this Principle includes a former patient) shall be entitled to have access to the information concerning the patient in his or her health and personal records maintained by a mental health facility. This right may be subject to restrictions in order to prevent serious harm to the patient's health and avoid putting at risk the safety of others. As domestic law may provide, any such information not given to the patient should, when this can be done in confidence, be given to the patient's personal representative and counsel. When any of the information is withheld from a patient, the patient or the patient's counsel, if any, shall receive notice of the withholding and the reasons for it and it shall be subject to judicial review.

2. Any written comments by the patient or the patient's personal representative or counsel shall, on request, be inserted in the patient's file.

Principle 20

CRIMINAL OFFENDERS

1. This Principle applies to persons serving sentences of imprisonment for criminal offences, or who are otherwise detained in the course of criminal proceedings or investigations against them, and who are determined to have a mental illness or who it is believed may have such an illness.

2. All such persons should receive the best available mental health care as provided in Principle 1. These Principles shall apply to them to the fullest extent possible, with only such limited modifications and exceptions as are necessary in the circumstances. No such modifications and exceptions shall prejudice the persons' rights under the instruments noted in Principle 1.5.

3. Domestic law may authorize a court or other competent authority, acting on the basis of competent and independent medical advice, to order that such persons be admitted to a mental health facility.

4. Treatment of persons determined to have a mental illness shall in all circumstances be consistent with Principle 11.

Principle 21

COMPLAINTS

Every patient and former patient shall have the right to make a complaint through procedures as specified by domestic law.

Principle 22

MONITORING AND REMEDIES

States shall ensure that appropriate mechanisms are in force to promote compliance with these Principles, for the inspection of mental health facilities, for the submission, investigation and resolution of complaints and for the institution of appropriate disciplinary or judicial proceedings for professional misconduct or violation of the rights of a patient.

Principle 23

IMPLEMENTATION

1. States should implement these Principles through appropriate legislative, judicial, administrative, educational and other measures which they shall review periodically.

2. States shall make these Principles widely known by appropriate and active means.

Principle 24

SCOPE OF PRINCIPLES RELATING TO MENTAL HEALTH FACILITIES

These Principles apply to all persons who are admitted to a mental health facility.

Principle 25

SAVING OF EXISTING RIGHTS

There shall be no restriction upon or derogation from any existing rights of patients, including rights recognized in applicable international or domestic law, on the pretext that these Principles do not recognize such rights or that they recognize them to a lesser extent.

Annex II

[INTRODUCTION]

International interest in the treatment of persons with mental illness has increased in recent years. The United Nations has for many years been concerned with the protection of disadvantaged persons whose rights are often restricted. Persons with mental illness are especially vulnerable and require particular protection. It is essential that their rights be clearly defined and established in accordance with the International Bill of Human Rights.

Scientific and technological developments provide increasing opportunities for better conditions of life. However, they can give rise to social problems as well as threaten fundamental freedoms and human rights. Similarly, medical and psychotherapeutic technology can constitute a threat to the physical and intellectual integrity of the individual.

There have been disturbing reports that scientific and technological products and methods have been misused, especially in the treatment of persons detained on grounds of mental illness.

Procedures under mental health law, including those governing access to independent and impartial bodies, are of cardinal importance to the freedom of patients, whose human and legal rights should be protected by every means.

The Principles are not intended to cover every legal, medical, social and ethical aspect related to a patient's admission to an institution or his or her detention, treatment, discharge and rehabilitation in the community. In view of the great variety of legal, medical, social, economic and geographical conditions of the world community, it is obvious that not all the Principles are capable of immediate application in all countries at all times.

The Principles are concerned with the protection of persons with mental illness and with the improvement of mental health care. They focus in particular on the small minority of patients suffering from mental illness who need to be admitted involuntarily to a mental health facility. The large majority of people with mental illness who receive treatment are not admitted to a hospital. Of the small minority who require admission, most enter hospital on a voluntary basis. Only a few require involuntary hospitalization. Facilities for the care, support, treatment and rehabilitation of persons suffering from mental illness should, as far as possible, be provided in the community in which they live. Admission to a mental health facility should therefore take place only when such community facilities are not appropriate or not available. The provision of more resources to make alternative, less restrictive, mental health services available will help to ensure that the Principles are easier to adhere to.

While it is important to protect mentally ill persons from abuse and to ensure that the label of mental illness is not an excuse for inappropriately limiting the rights of people, it is equally important to protect mentally ill persons from neglect and to ensure that their needs for care and treatment, especially those of persons integrated in the community, are satisfied.

The Principles are intended to serve, inter alia, as a guide to Governments, specialized agencies, national, regional and international organizations, competent non-governmental organizations and individuals and to stimulate a constant endeavour to overcome economic and other practical difficulties in the way of their adoption and application, since they represent minimum United Nations standards for the protection of fundamental freedoms and human and legal rights of persons with mental illness.

Accordingly, Governments should consider adapting their laws, if necessary, to the Principles or should adopt provisions in accordance with them when introducing new relevant legislation. The Principles set the minimum United Nations standards for the protection of patients.

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